



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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REGIONAL
ADMINISTRATOR'S
DIVISION

October 18 2022

Molly Dawson
NRCS Oregon State Office
1201 NE Lloyd Blvd #900
Portland, Oregon 97232

Dear Molly Dawson:

The U.S. Environmental Protection Agency has reviewed the Natural Resources Conservation Service's September 2022 Notice of Intent to Prepare an Environmental Impact Statement for the Clear Branch Dam Rehabilitation Project in Hood River County, Oregon (EPA Project Number 22-0052-NRCS). The EIS is being prepared in partnership with the U.S. Forest Service. EPA has conducted its review pursuant to the National Environmental Policy Act and its authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

According to the NOI, the upcoming EIS will assess environmental impacts associated with rehabilitation activities needed to meet dam safety and environmental compliance standards and extend the dam life for another 50-100 years. The Clear Branch Dam is owned and operated by the Middle Fork Irrigation District and the Laurance Lake reservoir provides water to over 400 users to irrigate 6,362 acres in the Upper Hood River Valley. The EIS will evaluate four alternatives: structural rehabilitation (Alternative 1 and the Proposed Action); decommission (Alternative 2); nonstructural rehabilitation (Alternative 3); and no action (Alternative 4).

EPA is providing recommendations for the DEIS that include considerations related to environmental justice and climate adaptation, among other topics. The enclosed Detailed Comments provide the full range of recommendations for the DEIS. Thank you for the opportunity to provide scoping comments for this project. If you have questions about this review, please contact Caitlin Roesler of my staff at (206) 553-6518 and roesler.caitlin@epa.gov, or me, at (206) 553-1774 or at chu.rebecca@epa.gov.

Sincerely,

Rebecca Chu, Chief
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the
Clear Branch Dam Rehabilitation Project NOI
Hood River County, Oregon
October 2022**

Impacts Analysis

EPA recommends the NEPA document characterize the direct, indirect, and cumulative impacts that each of the proposed alternatives will have on the current conditions and how each of the alternatives account for and mitigate impacts. EPA recommends that the NEPA analysis also clearly explain how the project fits into broader goals and efforts related to watershed management and water conservation in the area.

Water Quality

To fully characterize the impacts to water quality that may result from this project, EPA recommends the NEPA document describe the current conditions of the area (i.e., acreage of wetlands, ditched and natural streams, Clean Water Act Section 303(d) listed waters, Total Maximum Daily Load plans, etc.). We note that there are 303(d) listed waterbodies in the project area that are impaired for temperature and fish and aquatic life.¹

The proposed project, including road work activities, may be subject to regulatory requirements and require permitting, such as Clean Water Act Sections 401, 402, and 404 permits.

Clean Water Act Section 401

The CWA provides states and authorized tribes the authority to grant, deny, or waive certification of proposed federal licenses or permits that may discharge into waters of the U.S. This section of the CWA is an important tool for states and authorized tribes to help protect the water quality of federally regulated waters within their borders, in collaboration with federal agencies. In developing the NEPA document, EPA recommends early coordination with the State of Oregon, tribes that have treatment in a similar manner as a state, and CWA § 401 authority for the purposes of streamlining regulatory processes.

Clean Water Act Section 402

EPA recommends the NEPA document identify any discharges to waters of the U.S. that are known, or are likely, to occur during construction and operation of the project and how these discharges will be managed and minimized. Identify the NPDES permits that will be obtained for the construction phase, new (or modifications to) existing permits for operations, and how any previous permit exceedances could be prevented by incorporating pollution prevention measures into the project. Describe any site-specific best management practices (BMPs) or stormwater pollution prevention plans that will be used during construction to minimize those impacts. Examples of BMP measures to include are: physical measures like silt fencing; timing and sequencing restrictions; setback provisions from existing streams, riparian areas, or wetlands; equipment decontamination; and/or invasive species management.

¹ https://mywaterway.epa.gov/waterbody-report/OREGONDEQ/OR_WS_170701050504_02_101999/2022. Accessed 10/18/2022.

Clean Water Act Section 404

The proposed project may require a permit under CWA § 404 from the U.S. Army Corps of Engineers for the discharge of dredged or fill material into waters of the U.S. Wetlands, vegetated shallows, mud flats and cobble substrates are all considered special aquatic sites under the CWA §404(b)(1) Guidelines (40 CFR 230).

EPA recommends that the NEPA document:

- Clearly identify any discharges to waters of the U.S. that are known, or likely, to occur that will be subject to CWA § 404. Identify and describe the impact of those discharges, control measures to be employed to address those impacts, and BMPs to prevent discharge of water and pollutants.
- Includes sufficient information that can serve as a basis to determine whether the project would satisfy the requirements for the CWA § 404 permit or identify appropriate measures to mitigate the project's impacts to all waters of the U.S.
- Structure the alternatives analysis so that it is consistent with meeting requirements of both the CWA and NEPA.
- Describe the regulatory criteria and processes utilized to screen potential alternatives and thoroughly evaluate alternatives that would pose less adverse impacts.
- Describe how compensatory mitigation will be quantified and provided to offset impacts, with specific project examples and options as available.

Wildlife and Aquatic Habitat

The NOI states that the reservoir, Middle Fork Hood River sub-basin, and confluences of Clear Branch, Pinnacle Creek, Coe Branch, and Eliot Branch support critical habitat for a variety of protected species. EPA recommends consulting with U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Oregon Department of Fish and Wildlife where there are potential project impacts to federal or state listed species or habitat impacts. EPA recommends the NEPA document describe wildlife and aquatic habitats in the affected environment (e.g., habitat type, plant and animal species, functional values, and integrity) and the environmental consequences of the proposed action on these resources (e.g., impacts to recreational fishing). For any impacts that cannot be avoided through siting and design, describe the types, location, and estimated effectiveness of BMPs applied to minimize and mitigate impacts to wildlife and aquatic resources.

Air Quality

EPA recommends the NEPA document include a discussion of ambient air conditions (baseline or existing), National Ambient Air Quality Standards and nonattainment areas, and potential air quality impacts of the proposed project for each alternative. In estimating criteria pollutant emissions for the analysis area, discuss the timeframe for release of these emissions through the license lifespan of the proposed project.

To minimize the environmental impacts of construction related work, EPA recommends the NEPA document identify actions to minimize the impacts to local air quality, especially any fugitive dust and diesel emissions.

Climate Adaptation

EPA recommends including a discussion of reasonably foreseeable effects that changes in the climate may have on the proposed project, and what impacts the proposed project will have on climate change consequences. These considerations could help inform the development of measures to improve the

resilience of the project. EPA recommends an analysis of the potential for changing climatic conditions that may impact operations and maintenance of Clear Branch Dam.

EPA recommends including an analysis of the project's impacts on greenhouse gas emissions. Include in the analysis the anticipated emissions from construction of the project, maintenance of the project, and any potential emissions from anaerobic activity within the reservoirs. Include in the analysis a discussion of how the project may be useful in achieving carbon emission reductions over the projected lifespan of the proposed facility.

Environmental Justice

Executive Order 12898 directs federal agencies to identify and address the disproportionately high and adverse human health effects of federal actions on minority and low-income populations, to the greatest extent practicable and permitted by law. EO 13985 on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* should also be incorporated into NRCS's analysis because it includes a modern definition of equity that clarifies a broader approach.

Assessing EPA's Environmental Justice Screening and Mapping Tool (EJScreen) information is a useful first step in understanding locations that may be candidates for further review or outreach.² EPA considers a project to be in an area of potential environmental justice (EJ) concern when an EJScreen analysis for the impacted area shows one or more of the eleven EJ Indexes at or above the 80th percentile in the nation and/or state. At a minimum, EPA recommends an EJScreen analysis consider EJScreen information for the block group(s) that contains the proposed action(s) and a one-mile radius around those block groups.

It is important to consider all areas impacted by the proposed action(s). Areas of impact can be a single block group or span across several block groups and communities.³ When assessing large geographic areas, consider the individual block groups within the project area in addition to an area-wide assessment. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators.⁴ As the screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location and/or proposed project, consider additional information in an EJ analysis to supplement EJScreen outputs. Further review or outreach may be necessary for the proposed action(s). To address these potential concerns, EPA recommends:

- Applying methods from "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report, or the Promising Practices Report, to this project.⁵ The Promising Practices Report is a compilation of methodologies gleaned from current agency practices concerning the interface of EJ considerations through NEPA processes.

² <https://ejscreen.epa.gov/mapper/>. Accessed 10/18/2022.

³ Agencies should define community as "either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions" (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

⁴ <https://www.epa.gov/ejscreen/technical-documentation-ejscreen>. Accessed 10/18/2022.

⁵ https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf. Accessed 10/18/2022.

- Characterizing project site(s) with specific information or data related to EJ concerns.⁶
- Describing potential EJ concerns for all EJ Indexes at or above the 80th percentile in the state and/or nation.
- Describing block groups that contain the proposed action and at a minimum, a one-mile radius around those areas.
- Describing individual block groups within the project area in addition to an area-wide assessment.
- Supplementing data with county level reports and local knowledge.

EPA notes that there may be air quality concerns to consider in the project area. For the two block groups overlapping with the project area, EJ Indexes for ozone, air toxics for cancer risk, and air toxics respiratory hazard index are elevated, over the 90th percentile compared to the rest of Oregon State. As stated in the Air Quality section, EPA recommends the NEPA document include a discussion of ambient air conditions (baseline or existing), National Ambient Air Quality Standards and nonattainment areas, and potential air quality impacts of the proposed project for each alternative and their potential for disproportionate impacts to communities with environmental justice concerns.

Tribal Consultation

EPA encourages NRCS to incorporate feedback from consultation with the Tribes when making decisions regarding the project. EPA recommends the NEPA document describe the issues raised during the consultations and how those issues were addressed, consistent with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.

Financial Assurance

As local, regional, and national conditions fluctuate due to climate change, EPA suggests requiring financial assurance mechanisms in licenses and other authorizations to cover the costs of safety measures and project operation and maintenance, including specific adaptive management plans to contend with changing climatic conditions. EPA also suggests establishing a trust to assist licensees with preventing or responding to accidental catastrophic failures. Careful consideration of local impacts will ensure financial assurances for new and existing projects are considered when creating measures to incorporate climate resiliency planning and response mechanisms for infrastructure.

⁶ For more information about potential EJ concerns, refer to the July 21, 2021, Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative: <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>. Accessed 10/18/2022.